

C&TSRR Commission

October 28, 2017

# **Policies and Practices Manual**

**C&TSRR Commission**

**Adopted March 29, 2012**

**Revised October 28, 2017**

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Commission may by written agreement delegate specified powers authorized by the Compact that are not reserved to the Commission by the terms of the 1977 Agreement.

From time to time the Commission creates special or ad hoc committees composed of members and other persons and assigns tasks as determined by action of the Commission. These members are appointed by the Chairman and approved by the Commission.

### **Cumbres Toltec Operating, LLC (CTO)**

Acting in accordance with the authority granted to the Commission under the terms of the Interstate Compact<sup>11</sup>, in December 2012 the Commission formed CTO, LLC, a wholly-owned subsidiary responsible for railroad operations and administrative support of the activities of Commission. CTO's sole partner is the Commission, with its four members serving as the CTO board.

Under this arrangement the Commission remains responsible for all matters of governance and policy, but delegates to its President responsibility for the day-to-day operations of CTO as its general manager, with the Vice Chairman of the Commission providing liaison with the President for matters pertaining to CTO activities. In their capacity as members of the CTO board, Commissioners hold periodic working sessions with the CTO general manager and various staffers to insure that CTO's activities are being performed in a manner consistent with the Commission's policies, objectives, and other requirements specified in this Manual.

For further information on CTO, its management, duties and obligations, employment policies, and its responsibilities for railroad operations and administrative support of the Commission please refer to Appendix XII, CTO Operating Agreement, August 5, 2017.

### **Contracting for Goods and Services**

The states have given the Commission the power to contract for services necessary to carry out the purposes of the Compact on such terms and conditions as the Commission deems proper.<sup>12</sup> Please see Appendix II for a more complete discussion of these provisions. Furthermore, under the terms of the Compact the C&TSRR is not bound by the procurement codes of either of the two states.<sup>13</sup>

As a matter of fair business practice, the Commission's contracting policy is for it and CTO to act in a manner consistent with the spirit of the procurement practices common to both states, but only to the extent that such conformance does not violate the Compact (please see Appendix III discussion).

<sup>11</sup> See particularly the 1977 Agreement, Part B, I (4) (b) (iii), (iv), (v), and (vii).

<sup>12</sup> UC -- 1977 Agreement, Part B, I (4)

<sup>13</sup> PL -- 6-5-6 NMSA 1978 and 24-60-1902 CRS 1973

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**Appendix XII – CTO Operating Agreement, August 5, 2017<sup>38</sup>****OPERATING AGREEMENT****CUMBRES TOLTEC OPERATING, LLC**

This Operating Agreement (the "Agreement") of the **Cumbres Toltec Operating, LLC**, a New Mexico limited liability company, (the "CTO") is executed by the **Cumbres & Toltec Scenic Railroad Commission** (the "Commission") acting as the sole member of CTO, and is effective as of \_\_\_\_\_, 2017.

WHEREAS, the States of Colorado and New Mexico (the "States") acting through the Commission jointly own the Railroad, a 64-mile long portion of the former mainline of the Denver & Rio Grande Western narrow-gauge railroad between Antonito, Colorado, and Chama, New Mexico (the "Railroad");

WHEREAS, the Commission has been created by virtue of the governing documents of the Interstate Compact between the States of Colorado and New Mexico which are the Railroad's owners as tenants-in-common (the "Compact");

WHEREAS, the States have authorized the Commission to preserve the Railroad as a living museum and to operate the Railroad in order to promote the public welfare by encouraging tourism and by facilitating the use of recreational and educational facilities in the remote areas of the States, Section 24-60-1701 and 24-60-1901, *et seq.*, C.R.S. and NMSA 1978, § 16-5-1 through 16-5-13 (the "Enabling Statutes");

WHEREAS, the Commission has registered CTO in compliance with the New Mexico Limited Liability Company Act (the "NM LLC Act") as a wholly-owned, limited liability company under the powers granted to it by the States in the Compact; and

WHEREAS, the Commission wishes CTO to be responsible for railroad operations and administrative support of the activities of Commission and the Railroad.

NOW THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the Commission hereby agrees as follows:

**ARTICLE I****DEFINED TERMS**

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall, for the purposes of this Agreement, have the meanings specified herein.

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<sup>38</sup> This is the text of the agreement approved by the Commission at its August 5, 2017, meeting and executed by the parties at that time.

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"Covered Person" means the Commission; any members, employees, or agents of the Commission; and the General Manager, any employees, or agents of CTO.

"C&TSRR" means the Cumbres and Toltec Scenic Railroad formed under the terms of the Compact.

"General Manager" means the person appointed by the Commission to manage CTO.

"Manual" means the current version of the Commission's Policies and Practices Manual as such may be revised from time to time. As a public document copies of the Manual are available on request from the offices of the Commission or CTO. Specific provisions of the Manual are incorporated by reference in this Agreement.

## **ARTICLE II**

### **INTENT OF THE PARTIES, FORMATION AND TERM**

Section 2.1 Formation. CTO was formed as a limited liability company pursuant to the provisions of the NM LLC Act, and the rights, duties and liabilities of the Commission shall be as provided in the NM LLC Act, but subject to the limitations imposed by the governing documents of the Compact.

Section 2.2 Term. The term of CTO commences on the date this agreement is executed and continues in existence perpetually, unless CTO is dissolved by the Commission.

Section 2.3 Registered Agent and Principal Place of Business. The street address of the initial registered office and principal place of business of CTO is 500 S. Terrace Ave., Chama, NM 87520, and the Commission is the initial registered agent of CTO.

Section 2.4 Qualification in Other Jurisdictions. The Commission shall cause CTO to be qualified, formed, or registered to the extent required by the laws of any other jurisdiction in which CTO transacts business.

## **ARTICLE III**

### **DUTIES AND RESPONSIBILITIES OF CTO**

Section 3.1 Relationship with the Commission. The Commission remains responsible for all matters of governance and policy, but assigns to the General Manager responsibility for the day-to-day railroad operations of CTO and administrative support of the Commission. All assets of the railroad are held in the name of the Commission, with no assets held separately by CTO.

The Commission shall assign one of its Commissioners to provide liaison with the General Manager for matters pertaining to CTO activities. In its capacity as the sole member of CTO, the Commission shall hold periodic working sessions with the CTO General Manager and various staffers in order to ensure that CTO's activities are

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being performed in a manner consistent with the Commission's policies, objectives, and other requirements specified in the Manual.

Section 3.2 Railroad Operations. CTO's primary responsibility is to operate and maintain the C&TSRR, these functions having been provided in the past by outside contractors under lease agreements or management services contracts. In order to do this CTO performs the functions typically associated with operating steam-powered tourist trains carrying passengers over a railroad right-of-way connecting Chama, NM, and Antonito, CO, along with all of the other ancillary functions necessary to provide such services, and in a manner consistent with the provisions of the Interstate Compact between Colorado and New Mexico and in keeping with the railroad's status as a National Historic Landmark.

CTO's operating duties include: (a) operating trains and related services necessary to transport the public in a safe manner, (b) providing a quality service for its customers, (c) providing reservation and office services and systems for such train service, (d) marketing the railroad's offerings, (e) maintaining and preserving locomotives, rolling stock, structures, buildings, track, right-of-way, and other assets involved in the operation of the railroad, and (f) managing the railroad's day-to-day operations in a sound, businesslike manner.

Section 3.3 Administrative Support. CTO (a) manages the administrative, budgetary, financial, and recordkeeping activities of the Commission; (b) processes and controls receipts and disbursements, (c) submits periodic plans, budgets, financial reports, and operational objectives to the Commission for approval; (d) promotes and manages efforts to obtain funding from government and private sources as directed by the Commission; (e) establishes and maintains all business and administrative systems to assure the C&TSRR's compliance with all local, state and federal regulations; (f) represents the Commission in day-to-day relations with (i) the public, (ii) government entities such as the FRA and funding agencies, and (iii) contractors such as the Friends, the dining concessionaire at Osier, and the bus service; all as directed by the Commission in accordance with its policies and practices which are more fully described in the Manual.

Section 3.4 Other Related Duties. CTO shall engage in such other business and activities and do any and all other acts and things that the Commission may deem necessary, appropriate, or advisable from time to time in furtherance of the purposes of CTO as set forth in this Article.

Section 3.5 Employment Policies. CTO employs all the staff necessary to carry out the administrative support functions, railroad operations functions, and other related duties assigned to it by the Commission. Accordingly, the Commission has delegated to CTO responsibility for implementing the employment policies and practices described in the railroad's Employee Handbook, which is available at the Commission's office upon request. This handbook describes the railroad's HR policies and practices including terms of employment, ethical standards, payroll practices, benefit programs, working conditions, employee conduct, disciplinary procedures, etc. Like any other business CTO's employment practices are subject

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to state and federal labor laws and regulations. Furthermore, consistent with the terms of the Compact, none of its employees is an employee of either state.

#### **ARTICLE IV**

##### **MANAGEMENT**

Section 4.1 Duties of the General Manager. Reporting directly to the Chairman of the Commission, the General Manager shall have full authority to manage the business and affairs of CTO and to perform activities customary or incident to the management of CTO in a manner consistent with the provisions of the Compact and the Enabling Statutes and the provisions of the Manual.

Section 4.2 Number, Tenure and Qualifications. CTO shall have one General Manager, who shall be appointed by an affirmative vote the Commission. A General Manager shall hold office until a successor shall be appointed, or until the General Manager's earlier withdrawal, resignation or removal.

Section 4.3 Title of General Manager. The Commission may at its discretion confer the title of "President of the C&TSRR" upon the General Manager.

Section 4.4 Resignation. A General Manager of CTO may resign from the position of General Manager at any time by giving written notice to the Commission, and said resignation shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice.

Section 4.5 Removal. A General Manager may be removed at any time, with or without cause, by an affirmative vote of the Commission.

Section 4.6 Vacancies. Any vacancy in the position of General Manager shall be filled by the Commission by affirmative vote of the Commission.

Section 4.7 Delegation of Authority, Officers. The General Manager shall have the power to delegate authority to such officers, employees, agents and representatives of CTO as the General Manager may from time to time deem appropriate. Any delegation of authority to take any action must be approved in the same manner as would be required for the General Manager to approve such action directly. The salaries of all officers and agents of CTO shall be fixed by the General Manager.

#### **ARTICLE V**

##### **BOOKS, RECORDS, AND FINANCIALS**

Section 5.1 General. In order to fulfill its duties and responsibilities as described in Article III, CTO shall support and comply with the books, records, and financial reporting requirements of the Compact and any other related policies and practices described in the Manual as these may be revised from time to time. Particularly pertinent are provisions in the Manual that set forth the Commission's policies and practices regarding (a) Books and Records, (b) Budgets, Accounting, Finances, and Audits, (c) Contracting for Goods and Services, (d) Reports to the Governors, (e) Ethical Standards, (f) Risk Management and Insurance, (g) Safety and Emergencies, and (h) FRA Oversight.



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Section 5.2 NM LLC Act Requirements. CTO shall maintain at its registered office and principal place of business all records and materials CTO is required to maintain at such location under the NM LLC Act and available for inspection by the Commission.

## **ARTICLE VI**

### **TAX MATTERS**

Section 6.1 Taxation of CTO. CTO shall be treated as a disregarded entity for U.S. federal income tax purposes because it has only one member, the Commission.

Section 6.2 Federal Tax Returns. CTO shall generate for each Fiscal Year (or part thereof), Federal tax returns for the Commission, CTO, and any other subsidiary in compliance with the provisions of the IRS Code and any required state and local tax returns.

Section 6.3 Tax Matters Representative. The Commission shall act as Tax Matters Representative of CTO for purposes of §6231(a)(7) of the IRS Code and shall have the power to manage and control any administrative proceeding at the CTO level with the IRS.

## **ARTICLE VII**

### **LIABILITY, EXCULPATION AND INDEMNIFICATION**

Section 7.1 Liability. No Covered Person shall be obligated personally for any debt, obligation or liability of CTO solely by reason of being a Covered Person.

Section 7.2 Exculpation. No Covered Person shall be liable to CTO or other Covered Persons for any loss, damage or claim incurred by reason of any act performed or omitted by such Covered Person in good faith on behalf of CTO and in a manner reasonably believed to be within the scope of authority conferred on a Covered Person by this Agreement; provided that no Covered Person shall be released from liability for any such loss, damage or claim incurred by reason of a Covered Person's gross negligence or willful misconduct.

Section 7.3 Termination. An affirmative vote of the Commission shall be required to dissolve CTO.

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## **ARTICLE VIII**

### **REPRESENTATIONS AND WARRANTIES**

Section 8.1 The Commission. The Commission hereby represents and warrants to CTO that (a) the Commission is duly organized, validly existing, and in good standing under the provisions of the Compact, and that (b) the Commission has all the powers and authority required under the Compact to execute this Agreement.

## **ARTICLE IX**

### **MISCELLANEOUS**

Section 9.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of all of the parties and, to the extent permitted by this Agreement, their successors, legal representatives and assigns.

Section 9.2 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

Section 9.3 Governing Law. This Agreement and the rights of the parties hereunder shall be interpreted in accordance and Jurisdiction with the laws of the State of New Mexico, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

### **CUMBRES TOLTEC OPERATING LLC**

By: \_\_\_\_\_, General Manager

### **CUMBRES & TOLTEC SCENIC RAILROAD COMMISSION**

By: \_\_\_\_\_, Commissioner

By: \_\_\_\_\_, Commissioner

By: \_\_\_\_\_, Commissioner

By: \_\_\_\_\_, Commissioner